MINUTES OF SPECIAL MEETING
SUGAR CITY COUNCIL
MONDAY, JUNE 19, 2017

Presiding: Mayor David D. Ogden
Meeting Convened at 6:30 p.m.
Prayer: Bruce Arnell
Pledge of Allegiance

Present: Mayor David D. Ogden; Clerk-Treasurer Wendy McLaughlin; Councilmen Bruce King , Bruce Arnell, Joe Cherrington, and Matt Garner; City Public Works Director Zane Baler; Attorney Michael W. Brown of Beard, St. Clair, Gaffney representing Jeff and Ryan Lerwill; Citizens Elaine King, Kristine Rawlinson, Brittany Turcios, and Vaun Waddell.

NOTICE OF SPECIAL MEETING TO DISCUSS POSSIBLE ADOPTION OF RESPONSE TO "MOTION FOR RECONSIDERATION" AND SUPPLEMENTAL PUBLIC HEARING FOR OLD FARM ESTATES DIVISION #3: Mayor Ogden called a special council meeting following the filing of a "Motion for Reconsideration" delivered by Vaun Waddell representing Petitioners Travis Williams, Amanda Williams, Bo Crofoot, Debra Thompson, Ray Barney, Mary Louise Barney, Elaine King, Vaun Waddell, and the Sugar City Citizens for the Rule of Law, an unincorporated association to the city prior to the regularly scheduled meeting on Thursday, June 8, 2017. Due to lack of a quorum the meeting was later cancelled that evening (see Attachment #1).

MOTION TO AMEND THE AGENDA: The council made a motion to amend the agenda to include an executive session.

MOTION: It was moved by Councilman Cherrington and seconded by Councilman Arnell to amend the agenda to include an executive session; motion carried.

EXECUTIVE SESSION:

6:45 P.M. It was moved by Councilman Cherrington and seconded by Councilman Arnell, pursuant to Idaho Code 74-206 1(f), "Legal counsel on pending or imminently likely litigation, not merely when legal counsel is present," to move into executive session. The mayor called for a roll call vote:

Those voting aye: Councilmen King, Cherrington, Garner, and Arnell
Those voting nay: None

Thereupon the mayor declared the motion passed.

7:40 P.M. The executive session ended and the regular council meeting reconvened. No decisions were made and there was no deliberation made.

DISCUSSION AND POSSIBLE ADOPTION OF RESPONSE TO MOTION FOR RECONSIDERATION: Councilman King read a statement addressed to the council, staff, and friends that "after many hours of contemplation and going back and forth on a possible decision, I choose to recuse myself from participating in deliberations and decisions on this legal challenge before the city." The council accepted Councilman King's recusal. Councilman King then stepped down from the council podium and joined the audience.

DISCUSSION AND POSSIBLE DATE SET FOR A SUPPLEMENTAL PUBLIC HEARING ON OLD FARM ESTATES DIVISION #3 APPLICATIONS FOR A ZONE CHANGE AND PRELIMINARY PLAT: The council set a public hearing date for Thursday, July 13, 2017, for a supplemental hearing on all new or additional information relevant to the Old Farm Estates Division #3 Zone Change and Preliminary Plat applications. Any previous information and testimony given should not be repeated. The city intends to have a moderator present to conduct the meeting.

MOTION: It was moved by Councilman Arnell and seconded by Councilman Garner to set the date of Thursday, July 13, 2017, for the supplemental public hearing on both the zone change and preliminary plat applications for new and additional information only and to procure a meeting moderator; motion carried

Meeting adjourned at 7:45 p.m.

Signed:_____ Attested:_____

David D. Ogden, Mayor Wendy McLaughlin, Clerk-Treasurer

Before the City Council of Sugar City, Idaho

In Re: Application for a Zone change of Two Parcels of Property Commonly Known as Old Farm Estates, Division No. 3, to MU-1 and MU-2.	**MOTION FOR RECONSIDERATION**
Travis Williams, Amanda Williams, Bo Crofoot, Debra Thompson, Ray Barney, Mary Louise Barney, Elaine King, Vaun Waddell and the Sugar City Citizens for the Rule of Law, an unincorporated association, Petitioners	

Pursuant to Idaho Code § 67-6535(2)(b), the above-named Petitioners hereby seek reconsideration of the decision on May 25, 2017 by the City Council for the City of Sugar City approving the Findings, Conclusions and Recommendation of the Sugar City Planning and Zoning Commission dated May 10, 2017, (the "Decision").

Petitioners submit the Decision is deficient for the following reasons:

1. The Notice of Public Hearing for the April 6, 2017, Preliminary Plat and Zone Change Applications is deficient in that the Notice fails to specify the proposed zoning of the subject property.

2. The Planning and Zoning Commission failed to properly post notice of the hearing for the proposed rezoning on the premises at least one week prior to the hearing, as required by Idaho Code § 67-6511. (Notices were posted on Division No. 1 property, rather than the subject property.)

3. The Decision fails to state the relevant contested facts relied upon in granting the requested zone change. In particular, the Decision and the Findings contained therein are nothing more than a summary of the witness testimony followed by a very conclusory, vague and subjective recitation of the goals and needs of the City. Specifically, there is no "*reasoned* statement that explains the criteria and standards considered relevant nor any statement of the "relevant" contested facts relied upon or the rationale for the decision. See Idaho Code § 67-6535. By way of illustration, and not by way of exclusive delineation, the following examples demonstrate the inadequacy of the Findings of Fact:

a. Finding No. 1, indicates the applicant submitted a "completed application form" without cross-referencing the required contents of the application form or reciting the manner in which the application form complied with the City ordinance.

b. Finding No. 2, states that all required notices were "published, mailed and posted in a timely fashion as required by law", without specifying the manner in which such publication, mailing and posting were accomplished.

c. Finding No. 3, fails to state specific facts or evidence supporting the conclusion that the zone change "will *likely* provide the City with increased revenue" and "help improve infrastructure issues." There is no explanation of the manner in which increased revenue will be derived nor the manner in which the proposed rezone would improve such unidentified infrastructure issues.

d. Finding No. 4, contains no specific facts or evidence supporting the conclusion that "the City needs to take steps to grow" or "that it [the City] runs the risk of being enveloped by surrounding cities." In particular there is no explanation of why there is a risk of being "enveloped" when Sugar City, Rexburg and Madison County have adopted a mutual area of impact agreement wherein annexation is limited to the designated areas of impact which cannot be expanded absent renegotiation between the parties in accordance with the procedures set forth in such Agreement.

e. Finding No. 5, states that the proposed zone change "complies with all requirement (sic) of the City of Sugar City Planning and Zoning Ordinances," without specifying what relevant ordinances or standards comprise the basis for that finding.

f. Finding No. 7, concludes that "the [resulting] increased population of the City will improve existing commercial environment." Such statement is totally conclusory without specifying the factual basis for the conclusion that the rezoning will improve existing commercial development .

g. Finding No. 8, contains no specific facts supporting the conclusion that "additional housing will bring increased diversity to the City." This

Finding is nothing more than speculative and vague conjecture and is not supported by any evidence in the record.

h. Finding No. 9, is again a very conclusory and speculative finding without specific facts showing the manner in which new commercial activity "will increase employment opportunities in the community." Without knowing specifically what "new commercial activity" will locate within the rezoned area, it is impossible to determine whether the rezoning will increase employment opportunities in the community.

i. Finding No. 11, finds that "the increased traffic will be mainly in the new subdivision and streets can be sized for such traffic." Such Finding is conclusory and speculative without a traffic study or testimony in the record supporting the conclusion that it is possible to determine traffic patterns or to "size" the streets in advance, without knowledge of specific land uses.

4. The City's adoption of the MU-1 and MU-2 zones in this case violates the requirement of Idaho Code § 67-6511(2)(c) which requires all zoning district boundary changes to be in accordance with the Comprehensive Plan. Paragraph 13 of the analysis regarding whether the requested zoning is in accordance with the Comprehensive Plan, reflects a process that is spot zoning rather than zoning in accordance with the Comprehensive Plan. Specifically, this conclusion states that, "The multiple use zoning district in the city ordinances, however, (sic) is *guided only indirectly by the comprehensive plan*. Lands are designated for multiple use *on a case-by-case basis*" as directed by ordinance, consistent with the values and goals in the Comprehensive Plan." Idaho Code § 67-6511 does not allow zoning on a "case-by-case basis" (i.e. through issuance of special use permits) guided only *indirectly* by the Comprehensive Plan. Such "case-by-case" approval process fails to weigh the cumulative effect of allowing unlimited permitted uses within the zone and fails to assess or measure such effect against the goals and policies of the Comprehensive Plan. As such it constitutes spot zoning in violation of Idaho Code § 67-6511.

5. Consistent with the forgoing, there is no finding that addresses the impact of the MU-1 and MU-2 zoning *as a whole* upon adjoining commercial and residential properties. The MU-1 zone allows a "mixture of uses *such as* residential coupled with business, professional and commercial." The MU-2 zone allows a similar "mixture" with "high density residential uses." Apparently there is no limit on the nature or location of uses permitted in these zones. Such unlimited zone could potentially allow a development consisting entirely of business or commercial uses. Alternatively, the ultimate uses could

consist entirely of high density residential uses. Without a limit on the nature of and location of the allowed uses, it is impossible to evaluate compliance with the goals and policies of the Comprehensive Plan. As a minimum, the Decision should specifically analyze the impact of such a broad, far-reaching zone, with no apparent limitation on the type or location of uses allowed, upon adjoining properties and residential neighborhoods, and then evaluate such broad, unlimited use against the goals and objectives of the Comprehensive Plan. Instead the Decision takes a "case-by-case" approach and avoids the "in accordance with" requirement by simply noting that "multiple use" may involve lands *in any land use classifications* on the Land Use Map, subject to issuance of special use permits on a case by case basis. Multiple use zoning is essentially no zoning at all because it allows "lands in *any* land use classification on the Land Use map." The failure to specifically analyze the effect of an extremely broad zone that allows unlimited use of the property and the City's failure to evaluate the compliance of such unlimited use zone against the goals and policies of the Comprehensive Plan, violates the "in accordance with" requirement of Idaho Code § 67-6511.

6. The rezoning, when coupled with the unlimited nature of uses permitted in the MU-1 and MU-2 zones, deprives Petitioners of due process of law. Specifically, because the MU-1 and MU-2 zones allow unlimited commercial, business, professional and residential uses, there is no way Petitioners can analyze consistency of such unlimited uses with the goals of the Comprehensive Plan or provide testimony as to why such unlimited variety of uses, when collectively considered together, further the goals and objectives of the Comprehensive Plan. Essentially the process contemplated by the MU zones is a free-for-all and an invitation for standardless, case-by-case spot zoning when a special use permit is later sought. Such unfettered process is a violation of the Idaho Local Land Use Planning Act, as well as the due process clauses of the Idaho and United States Constitutions. It is in effect a PUD ordinance without any standards, criteria or guidance for later issuance of special use permits.

7. The Rezone Application for Old Farm Estates, Division No. 3 was incomplete and as a result, Petitioners were unable to provide informed testimony at the public hearing on the application. Specifically, by way of illustration and without limitation, the following items were not included in the Application:

a. City Code § 9-5-2(B): "The application shall include reasons for reclassification [and] discussion of zoning classification(s)." The application does not include such information.

b. City Code § 9-5-2(D): "The city and the landowner(s) may enter into a development agreement that addresses conditions specific to the

property to be reclassified. Such an agreement becomes part of the application and is subject to public hearing and rules for administrative action." Existing versions of the development agreement for the subject parcels were written many years ago, before the MU-1 and MU-2 zones existed, and pertain only to R-1 and R-2 land uses. Sections 2, 17, SC-12, SC-22, and SC-23 of the original Development Agreement are not relevant to this rezoning application and so are particularly unhelpful to the public and to those considering the application. A development agreement is not required at this stage of planning, but if it is present it must be included as part of the application. Members of the public who asked to see the application were not shown the Development Agreement prior to the hearing before the Planning and Zoning Commission. They were only shown the map and the incomplete form titled "Application for Zone Change" as submitted by the applicant.

c. During the two-week period leading up to May 25, 2017, Petitioners requested on three separate days to see the complete application which was the subject of the public hearing and they were provided three separate documents: the Application for Zone Change dated 10-14-15, the Application for Preliminary Plat Approval dated 12-20-16, and the Application for Zone Change dated 12-20-16. Apparently, the Application was an evolving document right up to the dates of the Planning and Zoning and City Council hearings. Because of the evolving nature of the Application, Petitioners were deprived of an opportunity to provide informed and relevant testimony in opposition to the Application.

d. City Code § 9-5-2(G)(2): "City council shall not overrule or materially change the recommendation of the planning and zoning commission without having held a public hearing." The First Amendment to Development Agreement, was negotiated and prepared between the time of the public hearing before the Planning and Zoning Commission and the time the application was considered by the City Council. Since it amends the Development Agreement per § 9-5-2(D), City Code, it becomes part of the application. Since the application contains nothing about intended uses, it cannot be determined whether the First Amendment is or is not a material change.

e. City Code § 10-3-5(A): "Contents of Preliminary Plat Application." Consideration of the application for zone change was also coupled on

the meeting agenda with consideration of the preliminary plat. This Code section requires that certain items be included within or appended to the Application. Such items were not included in the Application, thereby depriving Petitioners of the ability to provide informed and relevant testimony at the public hearing.

f. City Code § 10-5-2(C): "The preliminary plat application and/or development agreement shall include applicable items from section 10-5-3 of this chapter." Neither the preliminary plat application nor the development agreement contain any of these the items. For instance, City Code § 10-5-3(A) includes the following site plan requirements:

A: Site Plan: "The site plan shall include elevations, perspective drawings, and such other information as will show:

i) Architectural styles and building designs;
ii) Architectural materials and colors;
iii) Extent and type of open space;
iv) Landscaping;
v) Screening, if applicable;
vi) Type and operation of solid waste facilities; and
vii) Parking."

No site plan was submitted. Clearly, under the unlimited uses allowed in an MU zone, condominiums or PUD's are an allowed use. Therefore consideration of a preliminary plat at this stage was a meaningless exercise because the ultimate use is unknown at this point.

In spite of the glaring shortcomings for multiple-use zoning, the City Code envisions that applications for changing land to multiple-use include considerable detail about the anticipated development. Given the unlimited nature and unspecified location of the multiple uses allowed in the MU zones, without such detail Petitioners were unable to provide informed and relevant testimony at the public hearing regarding compliance of the proposed rezone with the Comprehensive Plan.

8. There is no substantial evidence in the record to support Findings Nos. 3 through 11 inclusive in the Decision.

Based upon the foregoing, Petitioners respectfully request the City Council reconsider its Decision upholding the Findings and Conclusions of the Planning and Zoning Commission.

DATED this 8th day of June, 2017.

Dale Storer

Dale W. Storer
Holden, Kidwell, Hahn & Crapo, P.L.L.C.
Attorneys for Petitioners

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